The Scottish Judiciary in Constitutional Polarity

Jus Scoticum and the Herrenvolk-Franchise Elective Dictatorship

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Abstract

This paper establishes a precise constitutional classification of the Scottish judiciary: the Sovereign-External Colonial Enforcement Court, or SE-CEC. Three independently verifiable layers compose the classification, each grounded in primary evidence and (in two of the three) sourced from the institution's own record.

Layer One establishes the jurisdiction the judiciary holds: a sovereign Scots jurisdiction, founded in 1532, administering *Jus Scoticum* under instruments that locate sovereignty in the community of the realm, the Declaration of Arbroath of 1320 and the Claim of Right of 1689. These instruments remain intact and unrepealed, encased by the 1707 incorporation rather than abolished. Layer Two establishes the law the judiciary has declared: that, on its own primary judicial record, the senior bench has named the doctrine of unlimited parliamentary sovereignty alien to Scots law, and has twice declined to affirm that doctrine's reach over Scotland's constitutional foundations (*MacCormick* 1953; *Gibson* 1975). Layer Three establishes the operation the judiciary performs: that it nonetheless administers that alien doctrine as if it were binding, by its own continuous choice.

The classification names what these three layers combine to produce: a sovereign court that, rather than drawing its authority from its own foundational instruments, imports and enforces an external sovereign doctrine, and so functions not as an independent constitutional arbiter but as the local enforcement arm of an external (and, on the operating mechanics, colonial) administration.

The paper employs a Mechanic Audit methodology, separating the structural hardware of the judiciary's operation from the narrative layer through which that operation is presented as the impartial application of law. It does not advance a political argument; it performs a taxonomic audit, governed by one discipline: *document the contradiction, never defend the verdict.* The Court of Session, as the highest civil court, is the principal focus; the High Court of Justiciary and the sheriff courts appear as the wider judiciary in which the same condition operates. The constitutional implications are identified in the conclusion.

Keywords: *Jus Scoticum*; Court of Session; Scottish judiciary; SE-CEC; Sovereign-External Colonial Enforcement; Claim of Right of 1689; Declaration of Arbroath; *MacCormick v Lord Advocate*; *Gibson v Lord Advocate*; parliamentary sovereignty; encasement; mechanic audit; Herrenvolk-Franchise Elective Dictatorship.

Introduction

The prevailing account of the Scottish judiciary holds it to be the independent guardian of a distinct legal tradition: the Court of Session as Scotland's supreme civil court, the High Court of Justiciary as its supreme criminal court, the College of Justice administering a body of law that survived 1707 intact. On that account, the survival of *Jus Scoticum* and of its courts is itself the proof that Scotland's distinct constitutional order endured.

This paper does not dispute that the institutions survived. It audits what they now *do*. A mechanical audit of the judiciary's operation, the route of its appeals, the oath its judges swear, the doctrine its judgments apply, the questions its senior bench has declined to answer, reveals a structure the prevailing account does not describe. The judiciary holds a sovereign jurisdiction; its own record names the doctrine it enforces alien to that jurisdiction; and it enforces that doctrine regardless. The SE-CEC names the condition those facts compose.

The method is set out in full below. In short: the audit distinguishes the hardware of the judiciary's operation (what it mechanically does) from the narrative layer through which that operation is presented and justified. It is built on primary evidence, tiered by the action that earned each piece, and drawn wherever possible from the institution's own record.

The Court of Session is the principal focus throughout: it is the highest civil court, the forum in which the constitutional questions arise, and the court whose foundation, jurisdiction and record are most fully documented. Where a fact is specific to a particular court (the founding statute of 1532, *MacCormick*, the appellate route under the Constitutional Reform Act 2005) it is named as such. The classification, however, is of the judiciary as a whole: the same oath, the same appointment route, the same external override operate from the sheriff courts upward.

The paper proceeds through the three layers in turn, combines them in the Synthesis, tests the classification against the strongest counter-arguments, and identifies the constitutional implications in the Conclusion.

Methodology: The Mechanic Audit Protocol

The Core Distinction: Hardware and Narrative

The audit rests on a single distinction. Every institution presents two faces: the hardware, the mechanical reality of what it does (how its power is routed, what it enforces and on whose authority) and the narrative layer, the account through which that operation is described, justified and made to seem natural. The two need not agree. An institution may perform one function while narrating another, and the gap between the two is not hypocrisy to be condemned but data to be recorded.

For the Scottish judiciary, the narrative layer is the account of an independent court applying a distinct and surviving Scots law. Scots law is applied, and in the ordinary administration of justice the court is independent. The mechanical question is narrower: when the native constitutional foundation and the external doctrine of parliamentary supremacy collide, which does the hardware enforce? Across the great body of ordinary business, the "independence" of Scots law operates, in the constitutional instance, as a lateral buffer: it supplies the appearance of distinct Scottish autonomy (enough to satisfy regional identity and to absorb constitutional challenge) while ensuring that the decisive power mechanic routes back to the Crown-in-Parliament mechanism.

There is no body of "British law" in the constitutional sense at issue here. There is Scots law and there is English law, and the doctrine of the unlimited sovereignty of the Crown-in-Parliament is, on the senior Scots bench's own statement, a feature of the second and not the

first. The mechanical question is therefore not which of two competing British doctrines applies, but why a Scottish court enforces an English one.

The two orders rest on opposed constitutional foundations, and the audit names the polarity between them at the point where the court stands astride it. The Scots foundation is civic-constitutional: sovereignty located in the community of the realm, the Crown held on condition (Arbroath, the Claim of Right). The English foundation is political-elitist: the unlimited sovereignty of the Crown-in-Parliament, a doctrine whose developed modern form this paper names the *Herrenvolk-Franchise Elective Dictatorship* (H-FED): supremacy vested in the elected Parliament without conditional limit.[1] The full account of the two foundations is the subject of a companion analysis. Here the polarity frames one mechanical question: which foundation does the court's hardware enforce when the two collide? The English doctrine's character is documented fact: the bench's own statement that the doctrine is alien to Scots law.

Evidential Standards

The audit applies a three-tier evidential standard throughout. Primary evidence (a primary instrument or judgment read against its authoritative source: the NRS manuscript, the Records of the Parliaments of Scotland, Bailii, the Statutes of the Realm) carries full analytical weight, and that weight is earned by a nameable act of verification, not assigned by confidence or format. Secondary inference (analysis applied to verified primary material) is used where the primary record supports a structural conclusion that requires analytical extension. A working hypothesis (plausible and consistent with the evidence but not yet grounded) is named explicitly where used and is excluded from the audit's principal conclusions.

The audit prefers, wherever it can, evidence of a particular kind: the *self-indictment*, the fact placed on the record by the institution itself, or by the Crown in opposition to it. Two of the three layers rest on such evidence. A classification built from an institution's own record cannot be answered by disputing the author's argument; it can be answered only by the institution disowning itself.

The Analytical Move: Encasement, and the Governing Discipline

Two principles govern the analysis.

The first is encasement without abolition. The audit does not assume that the surviving Scots instruments were extinguished in 1707. The mechanical record shows annexation and incorporation, not a union of equals; and the audit reads the preservation of the Scots courts and Scots law within the new architecture as encasement, the instruments enclosed within the Westminster structure rather than abolished by it. Whether the Scots Parliament could or did lawfully surrender any instrument is a question this audit does not decide. It records that the instruments remain unrepealed, and audits what the court does with them.

The second is the governing discipline of the whole paper: *document the contradiction, never defend the verdict.* The audit's task is to put the duality on the table (the sovereign foundation and the colonial enforcement, pressing against each other on the same bench) using only documented facts and the court's own record. It does not cross into defending a litigated constitutional verdict (that the 1707 ratification was void, that the Scots Parliament lacked capacity to make it). Every load-bearing line must reduce to a documented fact or the court's

own record. If a line requires winning a contested constitutional claim in order to stand, it is lifted out. A documented contradiction defends itself; a verdict must be defended. The audit documents; it does not rule. This discipline is stated here once and governs every section that follows.

The classification SE-CEC names a *condition*, not a fixed and permanent type. The reserved right belongs to the community of the realm, not to the court (Layer One); the court is an instrument of the people, and on the record it has not reached the merits its own senior bench reserved, the merits on which the justice the people seek would be determined. The condition is therefore one the court performs and could cease to perform the moment a cause squarely pleads the right and the court reaches those merits. The gap is between the question the bench reserved and the operation in fact.

Literature Review: The Gap

Three currents of scholarship bear on the constitutional standing of the Scottish judiciary, and the distance between them is the space this audit occupies. Each addresses a part of the question; none audits the court mechanically.

The first is the Scots constitutional tradition itself. Its foundation is the institutional writers, Stair's *Institutions of the Law of Scotland* (1681) and Erskine's *Institute of the Law of Scotland* (1773) chief among them, whose works carry formal authority in Scots law and establish it as a distinct civilian order, not a regional variant of English common law. Its modern constitutional expression is the line through *MacCormick v Lord Advocate* 1953 SC 396, where Lord President Cooper held the unlimited sovereignty of Parliament to be a distinctively English principle with no counterpart in Scots constitutional law (at 411), and reserved the question of whether the entrenched Union provisions bind subsequent legislation (at 411–412), a reservation Lord Keith followed in *Gibson v Lord Advocate* 1975 SC 136 (at 144). This current states the *principle* of a distinct constitutional foundation, and states it well; but it has rarely been pressed to operational consequence. The nearest exception proves the point: T.B. Smith, "The Union of 1707 as Fundamental Law" [1957] PL 99, pressed the principle furthest, and pressed it as an argument of *law*, the fundamental-law status of the Union legislation; the operation of the court that would have to give that status effect went unaudited. The reservations in *MacCormick* and *Gibson* are catalogued and celebrated as markers of a distinct legal identity. They are not asked what they require the court that declared them to *do*, nor why the principle is never mechanically enforced by that bench.

The second is the orthodox British constitutional account, in which the sovereignty of the Crown-in-Parliament is the supreme and uniform rule throughout the United Kingdom. Its classical exposition is Dicey's *Introduction to the Study of the Law of the Constitution* (1885); its canonical modern restatement is H.W.R. Wade, "The Basis of Legal Sovereignty" [1955] CLJ 172, written in direct response to Cooper's dictum: Wade takes the *MacCormick* remark as his example of the "controverted" view and restates the orthodox position that the rule by which courts obey Acts of Parliament is itself beyond the reach of statute. On this account the Scots dicta are eloquent but spent: obiter remarks of historical interest, overtaken by the practical

supremacy of Westminster. The account does not deny the dicta exist; it denies they constrain anything, and so finds no live constitutional question to audit, the Scottish judiciary's compliance is simply the correct application of settled law.

The third is the continuator-state and decolonial scholarship, which shifts the focus from internal administrative law to international standing and constitutional legitimacy. Its classic statement is Charles H. Alexandrowicz, "New and Original States: The Issue of Reversion to Sovereignty" (1969), which argues that a state that lost its sovereignty to a colonial power and later regained it is not a "new" state but an "original" one that *reverted* to a sovereignty it had held before, a member of the Family of Nations restored, not a newcomer admitted. This current addresses the displacement of a native foundation directly, and asks whether it was lawfully displaced; it questions the authority of an intervening power over a nation whose own instruments precede and survive the intervention. It is described here, not adopted. The reversion doctrine presupposes that sovereignty was *lost* and is *regained*; it operates within the decolonisation paradigm. This audit takes no position on the validity of 1707 and neither adopts nor requires the reversion thesis. The counter-position within this current is itself on the record: the Crown-commissioned opinion of Crawford and Boyle (2013) concludes, as its preferred view, that Scotland was extinguished in 1707 and that the continuing state is England under a new name. Both sides of that dispute argue status and validity; neither audits the operation. The third current engages the legitimacy question; the audit holds that question aside and does not rest on it.

The gap is structural, and all three currents share its edge. The first states the foundation exists but does not operationalise it. The second denies the foundation operates but does not examine the mechanics by which it is overridden. The third contests the foundation's displacement but argues validity, not operation. None of the three audits the judiciary *mechanically*: none asks, holding the validity question entirely aside, what the court's own record says, what its hardware does, and what classification follows from the distance between the two. None frames the question as a polarity of two opposed foundations meeting on a single bench. That mechanical audit, and the classification it yields, is the gap this paper fills.

Layer One: The Jurisdiction It Holds

Layer One is drawn from the primary constitutional and institutional record. It establishes what the judiciary, on the documents, is*: the holder of a sovereign Scots jurisdiction, founded in the sixteenth century, grounded in a civilian tradition and in a constitutional foundation that locates sovereignty in the community of the realm, and carrying instruments that remain unrepealed.*

The Founding

The Court of Session was established as the College of Justice in 1532, by Act of the Parliament of James V, with the institutional sanction of the papal bull of Clement VII of 1531, and modelled in form on the Parlement of Paris. From its foundation it was a sovereign court of a sovereign realm: the supreme civil court of Scotland, presided over by the Lord President, who is also Lord Justice General and head of the whole Scottish judiciary. The institution whose

operation this paper audits is therefore not a creature of the post-1707 architecture. It predates the incorporation by 175 years, and entered that incorporation as the established supreme civil court of a distinct legal order.[2]

The Civilian Grounding

Jus Scoticum is a civilian system in its foundations, formed in the *ius commune*, schooled on the Continent, and shaped by the institutional writers (Stair, Erskine, Bell) whose works carry formal authority in Scots law to this day. The debt is not merely historical: senior Scots judges have acknowledged it directly, Lord Hope among them noting the formation of Scots lawyers in the civilian universities of the Low Countries. The significance for the audit is structural. Scots law did not derive from, and was not a regional variant of, English common law. It is a distinct legal order with a distinct constitutional grammar, and that distinctness is the precondition for everything Layer Two records.

The Constitutional Foundation

Beneath the private law sits a constitutional foundation of a particular shape: sovereignty located in the community of the realm, and the Crown held on condition.

The principle is stated in the Declaration of Arbroath of 1320 (NRS SP13/7): that the king reigns by the due consent and assent of the community, and that should he betray the realm, the community reserves to itself the right to remove him and choose another. This is the foundational statement of Scots popular sovereignty, the king as office-holder answerable to the community, not as the unconditioned source of authority.

The principle is *enforced*, more than three and a half centuries later, in the Claim of Right of 1689 (NRS PA2/33, p. 38; RPS 1689/3/108), which found that King James VII had forefaulted the Crown (the manuscript verb is *forefaulted*, not the normalised *forfaulted* of later editions) and that the throne had become vacant, the Estates then settling it on William and Mary on conditions. The Claim of Right is the Arbroath principle in operation: a reigning monarch removed by the community of the realm for having governed contrary to law. It is not a historical curiosity. It remains unrepealed, and it is the instrument by which the Scottish constitutional tradition holds the Crown to be conditional and answerable, the precise opposite of the doctrine of an unlimited Crown-in-Parliament.

The Reserved Right

Within this foundation sits a standing reserved right: that no act of the Parliament prejudice the lawful right of any person not heard for their interest, and that the right to challenge such an act remains with the community of the realm. The *salvo jure cujuslibet* is the parliamentary record's recurring expression of it. It is not a sessional housekeeping clause spent on enactment, the acts describe the saving as the standing meaning of the estates "in all preceding parliaments" (the Act of 1592, RPS 1592/4/60; the codifying Act of 1663, RPS 1663/6/146), and the estates renewed it across session after session from 1592 to the dissolution of the independent Parliament. The recurrence is the evidence of a standing commitment, not of its limitation.[3]

That the reserved right ran to the very end is on the record. On 25 March 1707, the Parliament's final sitting day, the estates enacted the *Act salvo jure cujuslibet* (RPS 1706/10/465): read, again read over, voted, approved, and touched with the royal sceptre by the high commissioner in the usual manner, immediately after the *Act concerning the publick debts* (RPS 1706/10/464), which carried the Equivalent and the settlement of the Company of Scotland Trading to Africa and the Indies. The same session that enacted the incorporation's financial machinery reaffirmed, as its closing constitutional act, the saving of the people's rights. In its fuller form the act does more than direct interpretation: it expressly obliges "the lords of session and all other judges of this kingdome" to judge between parties according to their several rights as those stood before the making of the said acts, an express duty placed on the Court of Session to protect pre-existing right against the prejudicial effect of legislation.(4)

The scope of the saving is stated precisely. By its own text the *salvo* reaches the session's *particular* acts and ratifications in favour of particular persons, and the pre-existing rights of third parties, not public general legislation, and not the Treaty ratification of 16 January 1707, which it post-dates by more than two months. What it establishes for Layer One is exact: the foundation reserves to the community a right against prejudicial legislation, and expressly tasks this court with vindicating it. Whether that reserved right extends, today, to a jurisdiction to set aside *public* legislation is the question Layer Two records the senior bench reserving.

The Encasement of the Sovereign Instruments

The 1707 incorporation did not abolish this foundation; it enclosed the instruments that carry it. The relevant instruments are the ratification by the Parliament of Scotland (the Act of 16 January 1707) of the Articles of Union, and within them:

- Article XVIII, which provides that the laws in use within Scotland remain in the same force as before (except such as are contrary to or inconsistent with the Treaty), alterable by the Parliament of Great Britain: laws concerning public right may be made uniform, but no alteration be made to laws concerning private right "except for evident utility of the subjects within Scotland".
- Article XIX, which provides that the Court of Session "remain in all time coming within Scotland," together with the other Scots courts.

The orthodox reading presses the words "alterable by the Parliament of Great Britain" as proof that the foundation was, after 1707, simply subordinate to Westminster. The audit bounds that reading on its own terms. Article XVIII distinguishes *regulation* from *abolition*; it entrenches the laws of private right behind a substantive condition ("evident utility of the subjects within Scotland"); and Article XIX commits the Court of Session's continuance to "all time coming." That these are real limits, and not mere form, is confirmed from the Crown's own side: in *MacCormick* the Lord Advocate conceded that certain parts of the Union legislation could not be changed by subsequent legislation. The preservation clauses are therefore evidence of encasement: a distinct foundation enclosed within the new architecture, its continuance promised and its private law conditionally entrenched. And the enclosure is made of standing

law, not historical residue: the ratification Act and Articles XVIII and XIX have not been repealed, and the foundational instruments they encase stand unrepealed, within an architecture that has never enacted their removal.

The Standing Reality

On the primary record, then, the judiciary holds: a sovereign court, founded in 1532, pre-dating the incorporation; a distinct civilian legal order; a constitutional foundation locating sovereignty in the community and holding the Crown conditional (Arbroath, enforced in the Claim of Right of 1689); a standing reservation of pre-existing right against prejudicial acts, renewed session after session and reaffirmed to the Parliament's final act in 1707 (the *salvo*); and encased instruments that, on their own terms and on the Crown's own concession, enclosed rather than extinguished that foundation. These instruments remain unrepealed. This is the jurisdiction the judiciary holds. Layer Two records what it has said about the doctrine it enforces over that jurisdiction.

Layer Two: The Law It Has Declared

Layer Two is drawn from the court's own primary judicial record and from the Crown's own concession. It is self-indictment evidence: the most definitive proof that the judiciary bypasses its own constitutional foundation sits in the mouth of the foundation's own custodian. The senior bench has named the doctrine it enforces alien to Scots law, has twice declined to affirm that doctrine's reach over the foundations, and has heard the Crown concede that the fundamental conditions cannot be changed.

The Dictum

In *MacCormick v Lord Advocate* 1953 SC 396, Lord President Cooper placed on the record, at 411, that the principle of the unlimited sovereignty of Parliament is a distinctively English principle with no counterpart in Scottish constitutional law.

The remark was *obiter dictum*; the petition failed because the matter at issue (the royal style and title) was found to be one of public, not private, right, and the petitioners' title to sue was not made out. It did not form binding *ratio*. The audit does not need it as binding law. It needs it as *proof of knowledge*: the highest judge of the Scottish civil bench formally recorded that unlimited parliamentary sovereignty is an imported doctrine.[5]

The Reservation: In the Same Case

Cooper did not stop at the dictum. At 411–412 of the same judgment he reserved his opinion on the powers of the court regarding the validity of legislation relating expressly to the Court of Session, and to laws concerning private right found by the courts to be contrary to Articles XVIII and XIX. In the same breath as the famous dictum, the Lord President declined to affirm that Westminster's writ runs over the entrenched provisions.[6]

The Crown's Concession: In the Same Case

And from the Crown's own side: in *MacCormick* the Lord Advocate conceded that certain parts of the legislation that created the Union of 1707 could not be changed by subsequent legislation (at 411). Crown counsel, on the record, conceding that the fundamental conditions

are unchangeable.[7]

The Reservation: Reaffirmed Two Decades On

In *Gibson v Lord Advocate* 1975 SC 136, Lord Keith dismissed the action as incompetent, holding that it had not been shown the Court of Session had authority to entertain the issue, and that the question whether a particular Act was "for the evident utility of the subjects within Scotland" under Article XVIII was an essentially political and non-justiciable matter. He then, at 144 (expressly "Like Lord President Cooper") reserved his opinion on what the position would be were the United Kingdom Parliament to pass an Act purporting to abolish the Court of Session, or the Church of Scotland, or to substitute English law for the whole body of Scots private law. The senior bench, following its own precedent, again declined to affirm Westminster's authority over Scotland's constitutional foundations.[8]

The Operational Contradiction

The SE-CEC classification does not need to litigate whether the imported doctrine is alien to Scots law, because the court has already said so, and has twice declined to rule that Westminster's authority reaches the foundations. The court has named the doctrine alien (Cooper, 411), reserved the power question (Cooper, 411–412; Keith, 144), and heard the Crown concede that the fundamental conditions cannot be changed (411).

Yet in daily operation the court enforces statutes and precedents derived from that exact doctrine. It applies the absolute power of the H-FED over the Scottish people while its own record names that power as having no counterpart in Scots constitutional law, and while it has never once ruled that the power lawfully reaches the foundations it is charged with administering.

The gap between what the bench has declared and what the court performs is the mechanical proof of the SE-CEC. A court that records a doctrine as alien, reserves the question of its reach (twice) and enforces it regardless, has removed its own defence of ignorance. The compliance is known, recorded, and, in the absence of any ruling compelling it, chosen.

The distinction holds at two levels of the same institution. At the level of its highest constitutional authority, the senior bench left the door explicitly open; it reserved the question, twice, and never closed it. At the level of daily operation, the court submits: it applies Westminster supremacy as binding in the ordinary run of cases. A hostile reader will say the daily practice is settled and the reservation merely theoretical. The audit answers on the record: settled practice is not a ruling, and the only constitutional rulings the court has produced on the point are two decisions not to rule. The everyday operation proceeds as though the question were closed against Scotland while the bench's own authority has left it open, which is the contradiction, not its resolution.

(The establishment's strongest reply (that the petitioners lost both cases, so the court is by ratio subordinate) is met in Counter-Arguments, where the four exhibits are turned against it.)

Layer Three: The Operation It Performs

Layer Three is self-indictment of a second kind: not the court's words but its mechanics. It records that the judiciary, having a sovereign foundation (Layer One) and having named the external doctrine alien (Layer Two), administers that doctrine anyway, through a set of operating mechanics each of which is read directly from the institution's own structure. The three mechanics below are verified at source; the Dean's confession is anchored from the public record.

Mechanic One: The Appellate Route

Both senior Scots courts feed an apex outside Scotland. Civil appeals from the Inner House of the Court of Session route to the UK Supreme Court under section 40 of the Court of Session Act 1988 (as substituted by section 117 of the Courts Reform (Scotland) Act 2014), the route the Constitutional Reform Act 2005 carried at section 40(3) until that subsection was repealed on 22 September 2015. From the High Court of Justiciary (otherwise the final court in Scots criminal matters) devolution issues route to the same apex under Schedule 6, Part I of the Scotland Act 1998, and compatibility issues under section 288AA of the Criminal Procedure (Scotland) Act 1995 (with section 288ZA defining a compatibility issue; both inserted by the Scotland Act 2012). The operative instance is the *Cadder* line (*Cadder v HM Advocate* [2010] UKSC 43). In the constitutional instance, the hardware terminates outside Scotland.[9]

Mechanic Two: The Oath

Senators of the College of Justice are sworn to the Crown under the Promissory Oaths Act 1868, not to the Claim of Right of 1689, not to the community of the realm. The oath of allegiance (section 2) binds the judge to bear true allegiance to the sovereign "according to law." The judicial oath (section 4) binds the judge to "do right to all manner of people after the laws and usages of this realm." Section 6 requires both oaths of the officers named in the Second Part of the Schedule, which under the heading "Scotland" names the Lord Justice-General and President of the Court of Session, the Lord Justice Clerk, and the Judges of the Court of Session.

The mechanic is not exclusion by wording but neutralisation at the gateway, and the distinction matters precisely because Layer One is correct. A black-letter reading could say that "the laws and usages of this realm" is wide enough to encompass the Claim of Right itself: that the unrepealed foundation is, technically, among those laws. The audit grants the point and does not rest the mechanic on omission. The mechanic is what the oath fixes at the threshold: allegiance to "our Sovereign," singular and unconditioned, sworn before the judge sits, with no corresponding oath to the conditionality of the Crown or to the sovereign community in which the foundation locates authority. Even if "this realm" could in principle carry the Scots foundation within it, the operative act of the oath is to bind the judge to the unconditioned Crown first and by name, while the conditional-Crown foundation is, at best, an unspoken implication a judge would have to reach for against the plain pull of the words sworn. The oath does not need to delete the foundation; it subordinates it by what it names and what it leaves unsaid. That is how the gateway performs the encasement, not by excluding the foundation from the text, but by fixing the judge's primary allegiance to the very office whose unconditioned supremacy the foundation denies.[10]

The gateway has a documented history, and the history is the hardware. The oath of allegiance sworn in Scotland after 1689 was prescribed by the Claim of Right itself, for all of whom an oath of allegiance might be required by law: the instrument that found the Crown forfeitable also wrote the replacement oath (allegiance to William and Mary, the monarchs the Estates had just settled on conditions) and expressly abrogated the oaths that came before. Allegiance and conditionality were clauses of the same instrument; to swear the oath was to swear within the settlement. The Promissory Oaths Act 1868 supplies the present form: allegiance to the Sovereign by name, her heirs and successors, and a judicial oath to the laws and usages of a singular realm, the settlement unnamed, the conditionality unwritten. Between the two instruments the oath migrated from inside the foundation's own text to inside the architecture that encases it.[11]

Mechanic Three: The Appointment Route

Judicial appointment runs through a route the executive gatekeeps. The Judicial Appointments Board for Scotland, established under section 9 of the Judiciary and Courts (Scotland) Act 2008, runs a merit-based selection and recommends an individual to the First Minister (section 11). For the senior bench, the First Minister then "must recommend to Her Majesty the appointment of that individual" (section 19, the Lord President and Lord Justice Clerk; section 21, the other judges). The executive is the mandatory conduit through which recommendations reach the Crown and the bench is populated. This is *executive-gatekept appointment*, not *executive control*. The same Act requires the First Minister, the Lord Advocate, the Scottish Ministers and members of the Scottish Parliament to uphold the continued independence of the judiciary (section 1(1)), and the selection is merit-based through an independent board. Every appointment to the bench passes through the executive's hands on its way to the Crown. The gateway's domestic location does not take it outside the external architecture: the conduit is created by statute within the Westminster-derived frame, and it terminates not in Holyrood but in the Crown appointment, the encased route, administered locally.[12]

The Dean's Confession

Supporting exhibit. The condition need not be inferred from anonymous practice, the senior bar has stated the doctrine on the public record, in his own name. Roddy Dunlop KC, Dean of the Faculty of Advocates and elected head of the Scots bar, set out his position on X in December 2023: the people "exercise their sovereignty at the ballot box," but "thereafter, the elected parliament is sovereign," and "whilst Scotland remains part of the UK the sovereign parliament in question is Westminster." Carried to its limit, in his own words (5:26 AM, 8 December 2023): "Let's envisage they pass a law which 100% of the populace oppose. That law is still law and, unless struck down by the courts in the very limited circumstances where that is possible, will be until repealed — by Parliament, not by the people. Sorry, but that's the actuality." That is the doctrine of the unlimited Crown-in-Parliament, the principle Lord Cooper named alien to Scots law (Layer Two), asserted as "actuality" by the senior officer of the Scots bar. It is the encasement stated aloud by the establishment itself.[13]

Working as Built

Layer Three's force is cumulative: each mechanic, taken alone, is explicable as ordinary administration; taken together, with Layers One and Two in place, they compose a court that enforces, by its own continuous choice, a doctrine it has named alien over a foundation it is expressly tasked to protect. The mechanic is not a malfunction. It is the operation performing exactly as it has been built to perform, which is the point of the classification.

The *salvo* (Layer One) is foundation evidence: the reserved right exists on the record, and the court is expressly tasked to protect pre-existing right. No cause asserting that right has been put to the court and refused. What Layer Three documents is the coexistence, on the one bench, of the reserved right and the enforced override: the operation enforces the external override through the three mechanics while the foundation that reserves the people's right, and tasks this court with protecting it, sits unrepealed beneath it.

The Synthesis: The Sovereign-External Colonial Enforcement Court

The three layers combine into one classification. Stated in its components:

[S-E] Sovereign-External. Layer One establishes the sovereign foundation; Layer Three establishes that the court bypasses it. The sovereign right that foundation reserves belongs to the community of the realm, not to the court: the court is the instrument tasked to give it effect. The structural feature is that this instrument, rather than giving effect to the people's foundational instruments, imports and applies an external sovereign doctrine, the English principle of the unlimited sovereignty of the Crown-in-Parliament, in their place: the active importation of a foreign override by the very instrument that exists to serve the native foundation. This is the agency at the centre of the classification, and it is precise about whose: the sovereign agency is the people's, whose right sits reserved and unvindicated; the court's agency is the instrument's, which turns to enforce the external doctrine rather than give effect to the foundation it exists to serve. The instrument enforces the external override while the foundation that reserves the people's right sits unrepealed beneath it, and the constitutional question its own bench reserved goes unreached.

[C] Colonial. The colonial character is read off the operating mechanics, on documented facts. An external power claims the authority to rewrite or ignore the terms of the 1707 instruments at will; that power is applied over a distinct legal system whose own constitution (the Claim of Right of 1689, the salvo, and the Arbroath principle of the community of the realm) reserves sovereignty to the community (Layer One), and whose own senior bench has named the imported doctrine alien (Layer Two); and the court enforces that external doctrine regardless (Layer Three). The word "colonial" is not imported from an external paradigm; it is the residue left when the alternative descriptions are tested against the record and fail, and they fail for one reason common to all of them: each presupposes a completed merger, the Scots foundation superseded into or absorbed by a single legitimated order within which one authority is subordinate to another. The record shows no such supersession. The foundation is enacted founding law, never repealed, inalienable, never displaced; no instrument has repealed it, and no ruling has decided it subordinate, the senior bench having reserved that question rather than answering it (Layer Two). It is operative not as a power the court has deployed

against Westminster, but as the Scots constitution itself, the constitutive law on which the court's own authority and the Crown's conditional title rest. The external doctrine is therefore performed over a foundation it has never legally surpassed, not enacted in its place.

So it is not a *union*: a union of equals does not leave one party holding the unilateral power to rewrite the terms while the other's foundation stands only on sufferance, and the Crown's own concession that certain provisions cannot be changed (Layer Two) is the admission that the relationship is not the one a union produces. Nor is it ordinary *domestic administration*, nor any of the descriptions a constitutional lawyer would reach for next: asymmetric incorporation, subordinated devolution, hegemonic union. Each describes *unequal but shared* authority within a single legitimated legal family; each requires the merger the record forecloses. The doctrine enforced here is not recorded as superior within a shared order; it is recorded, by the subordinated system's own senior court, as *alien to it*, a principle with no counterpart in Scots constitutional law (Layer Two): not the superior law of one family, but a foreign doctrine performed over a foundation that remains in effect. And the colonial character is a property of that operation, not a ruling on polity: it holds whether the relationship is nominally one polity or two, an external doctrine enforced over an unsurpassed native foundation, through that foundation's own court, is the colonial relation in operation, whatever one takes the statehood question to be.

Taken one at a time, each alternative fails against a named fact of the record. *Union* fails against the Crown's own concession: a union of equals does not leave one party holding unilateral power to rewrite the terms, and the Lord Advocate's concession in *MacCormick* (that the Treaty's provisions could not all be treated as freely alterable) is the Crown recording that the relationship is not the one a union produces. The 2018 Commons motion records the asymmetry's direction: the Scots principle affirmed in words, reserved in law, flowing nowhere. *Domestic administration* fails against the dictum: a court administering its own state's single legal order does not record that order's central doctrine as "a principle which has no counterpart in Scottish constitutional law" (1953 SC 396 at 411–412); the bench's own words place the doctrine outside the system the court administers, which is the one thing domestic administration cannot survive. *Asymmetric incorporation* fails against the absence of the incorporating instrument: incorporation of any degree requires the native foundation superseded into the new order, and the record holds no instrument of supersession, the Claim of Right of 1689 unrepealed, Articles XVIII and XIX preserving the distinct system, and the foundational question reserved by the senior bench rather than decided. *Subordinated devolution* fails against the scope of its own statute and its own apex ruling: the Scotland Act 1998 created and bounds Holyrood's competence, and [2022] UKSC 31 adjudicated that competence, neither touches the standing of the pre-existing foundation, which the Act did not repeal and the apex was never asked to decide; a description of the devolved layer cannot classify a court whose foundational jurisdiction predates the layer by centuries. And *hegemonic union* (the closest of the alternatives) fails against the same dictum from the other side: hegemony names a dominant doctrine within one shared legal family, dominant but common; a doctrine recorded by the subordinated system's own senior court as having *no counterpart* in that system's constitutional law is not the dominant member of a shared family; it is external to it, which is the colonial relation and not the hegemonic one.

To record that a doctrine is *alien* to Scots constitutional law is not to assert that Scotland and England are separate polities. The two claims are distinct, and only the first is on the record. The colonial character named here is a property of the *operation*, not a ruling on the constitutional status of the union: it describes what the mechanism does, not whether the two nations form one polity or two. A power that can unilaterally rewrite the terms of the 1707 instruments at will, enforced over a distinct legal order through a doctrine that order's own senior court has recorded as foreign to it, operates colonially in its mechanics, and it does so whether the relationship is nominally one polity or two. That a formal treaty instrument exists, that the Scots Parliament consented, and that the institutions were preserved are not answers to this, because the colonial reading does not deny any of them; it observes that a consented treaty which leaves one party holding the unilateral power to rewrite it, and enforced through a doctrine the other party's court names alien, has produced (in operation, on the documented mechanics) the colonial relation, not the union the instrument announces. The label attaches to the working of the machine, not to a contested verdict about the polity it sits within.

With union, domestic administration, and the intermediate incorporation descriptions all excluded on the documented facts, the mechanical description that remains, an external sovereign doctrine, named alien by the very court that enforces it, applied over a distinct legal order against that order's own reserved foundation, is colonial administration, and the court that enforces it is the colonial instrument. The colonial reading rests on the four documented facts and on the elimination of the alternatives, not on a validity ruling.

[E-C] Enforcement Court. Having accepted the Sovereign-External override, the court cannot function as an independent arbiter of constitutional truth. When the native limitation on the Crown collides with the external doctrine of parliamentary supremacy, the court uses its jurisdiction to enforce the override. Its compliance is not a legal inevitability dictated by statute, its own record contains no ruling compelling it, and two reservations declining to supply one. The bench *reserved* the question (Layer Two), and the operation does not *exercise* the reserve. The outcome thereof is the continuous non-exercise of the court's reserved jurisdiction, read precisely: the senior bench reserved the constitutional question and never closed it, and the court's operation proceeds as though it were closed against the foundation. The question its bench left open goes unreached while the override is enforced.

The Confirming Exhibit: Threshold Declination and Apex Enforcement

The classification is confirmed by the complete operational cycle of the Scottish judiciary when the native constitutional foundation is put before it. The pattern is consistent: the Court of Session neither enforces the native instruments on the merits nor explicitly strikes them down. It exercises a *threshold declination*, resolving the conflict between the native foundation and the external doctrine without reaching the substantive collision.

In *MacCormick* (no title to sue; the question reserved), *Gibson* (non-justiciable), and *Keatings* [2021] CSIH 25 (hypothetical and premature), the court used a threshold filter to terminate the challenge before the substantive collision between the Scots foundation and the external doctrine was reached. Each may be ordinary procedure correctly applied. The mechanical outcome is the same: a declination of the merits leaves the Sovereign-External override standing by default. This is the lateral buffer of the Methodology in operation, the ordinary

procedural working of the court performing the buffering function, absorbing the constitutional challenge while the decisive mechanic routes back to the H-FED. The declination of the merits is not the absence of the mechanic; it is the mechanic.

That cycle of local declination was closed by the architecture's apex, the appellate ceiling established at Mechanic One. In *Reference by the Lord Advocate of devolution issues* [2022] UKSC 31 (23 November 2022), the UK Supreme Court, to which the Court of Session is the feeder, ruled unanimously that the proposed Scottish Independence Referendum Bill relates to reserved matters and is outside the Scottish Parliament's legislative competence. The reserved matters are "the Union of the Kingdoms of Scotland and England" and "the Parliament of the United Kingdom" (Schedule 5, paragraphs 1(b)–(c)), the latter reservation expressly including "the sovereignty of the United Kingdom Parliament." The override stated on the merits, in the apex's own words.[14]

All three layers are then visible in the single cycle: the native foundation is raised (Layer One); the doctrine the senior Scots bench named alien is the operative reserved-matters test (Layer Two); and the Scottish judiciary, routing to and bound beneath that apex, carries the override (Layer Three). The Sovereign-External override stands whichever way the cause turns: declined below, enforced above.

Audit-Resultant Counter-Arguments Considered

"You lost both cases, so by ratio the court is subordinate." This is the strongest reply, and the four exhibits answer it. In neither *MacCormick* nor *Gibson* did the court rule that Westminster holds sovereign authority over Scotland's constitutional foundations. In both, the senior bench *expressly reserved* that exact question (Cooper at 411–412; Keith, following him, at 144). The cases fell on title to sue, on the public-versus-private-right distinction, and on non-justiciability, never on a finding of subordination. The court has never ruled itself subordinate on Scots constitutional substance across seventy years, while one Lord President recorded that the doctrine is alien and the Crown's own counsel conceded the fundamental conditions cannot be changed. The compliance is therefore performed in the *absence* of any ruling that compels it. That is not obedience to a judgment; it is the non-exercise of the reserved jurisdiction in place of one, which is precisely Layer Three. The reply, pressed, confirms the classification.

"The dictum is obiter and spent." Conceded as to its status, and irrelevant to its use. The audit does not deploy *MacCormick* as binding authority; it deploys it as proof of knowledge. An obiter remark is still a thing the bench knew and recorded. The classification rests on the gap between what the court knows and what it does, not on the dictum binding anyone.

"A concession by counsel is not a ruling." Correct, and the audit deploys it as neither. A concession binds no court; it is cited for what it is: the Crown's senior law officer, on the record of the senior Scots court, stating the Crown's position that certain provisions of the Union legislation cannot be altered. Its value is identical in kind to the dictum's, not binding law but proof of knowledge, this time the Crown's. Settled practice is not a ruling; neither is a concession, and the audit rests on neither. It rests on what both reveal: the doctrine's status, known and stated on the record by every party positioned to contest it.

"Origins carry no operative consequence" (the rule-of-recognition reply at its strongest). Conceded that no operative consequence has ever been *adjudicated*, and that concession is the documented condition itself, not an answer to it. The audit derives no constraint from the dictum; it documents that whether the origin-fact has operative consequence is precisely the question the bench reserved, twice, and has never answered, while enforcement proceeded as if it had been. The rule-of-recognition reply holds that the courts' settled practice is itself the rule; the record shows the senior bench expressly declining to settle the one question that would make it so. The reply assumes the answer the record shows unreached.

"Article XVIII makes the law alterable by Parliament, so Westminster's reach is the agreed term, not a colonial override." Article XVIII permits *regulation*, conditioned on "evident utility of the subjects within Scotland," and distinguishes that from *abolition*; Article XIX commits the court's continuance to "all time coming." The audit does not litigate what "alterable" means against a Crown lawyer's preferred reading; it points to the contradiction the Crown itself placed on the record. In *MacCormick* the Lord Advocate (the Crown's own senior law officer) conceded that certain provisions of the Union legislation cannot be changed by subsequent legislation (411). That concession admits a limit exists. The doctrine the court enforces in daily operation admits no such limit: it treats every provision as unilaterally rewritable by Westminster. Enforcing unlimited supremacy therefore contradicts the Crown's own concession that the power is not unlimited. The colonial reading does not depend on 1707 being void; it depends on the gap between what the Crown conceded and what the court enforces, both documented.

"Acquiescence, three centuries of compliance settle the matter." The objection at its strongest: the native foundation has not been asserted against Westminster by the judiciary for 319 years; in Scots law a rule long unexercised falls into *desuetude* and is superseded by settled contrary practice; the court administers an acquiesced constitutional reality, not a colonial override.

The audit documents encasement, not abandonment, and the doctrine invoked answers the objection on its own terms. *Desuetude* in Scots law carries two restrictions, both properties of the doctrine itself rather than of this case. As regards statutes, "the principle applies only to Acts of Parliament passed prior to the Union" (Green's Encyclopaedia of the Law of Scotland, 1933). And it sets a high bar: not mere neglect, but a contrary usage so established that it amounts to a settled custom of the community operating as a counter-law, and in Scots law the community whose settled usage can make or unmake law is one community at every level: the community of the realm, the same community in which the foundation locates sovereignty. A counter-law against the constitutive instruments of the community of the realm could form nowhere but within that community itself. The usage the objection relies on is *Westminster's* daily assertion of unlimited sovereignty, not a custom formed within the community of the realm; and the court's own record names that doctrine, at 411 of *MacCormick*, a distinctively English principle with no counterpart in Scots law. A doctrine the bench records as alien is the opposite of a counter-law absorbed natively. Desuetude reaches only the pre-Union instruments the audit documents, and no settled contrary custom of the community of the realm appears anywhere on the record. The instruments remain unrepealed. Long non-exercise is not desuetude; it is the encasement the audit names, the continuous non-exercise of a reserved jurisdiction, not its lawful abandonment.[15]

"The court is bound by hierarchy: enforcement is inevitability, not choice." The objection: the Court of Session is bound by the appellate ceiling (Mechanic One) to follow the UK Supreme Court; in [2022] UKSC 31 the apex held the sovereignty of the UK Parliament a reserved matter; the bench enforces that by strict precedent, not by choice. Hierarchical subordination to that architecture is not a defence to the classification; it is the [C] and [E-C] mechanic stated in the objection's own words. The court operates within an appellate structure that routes the final interpretive authority over the Scottish constitutional question to an apex enforcing the external doctrine. Whether the daily enforcement is framed as choice or as inevitability, the mechanical outcome is identical: the local machinery routes the foundational question to a ceiling that carries the override. And the apex's ruling reaches what was before it: [2022] UKSC 31 adjudicated the legislative competence of the devolved Parliament under the Scotland Act's own reservations; the question the senior Scots bench reserved (the native foundation pleaded directly against Westminster legislation in the Court of Session) was not before the apex and has never been adjudicated by it. The reservation sits not merely unexercised but unforeclosed. The audit does not locate the choice in the individual judge following precedent today; it documents the operation within a structure whose apex enforces the alien doctrine while the bench's own reservation (Layer Two) sits unexercised. Subordination confirms the classification; it does not answer it.

"Justiciability and ordinary procedure, the threshold dismissals are routine law, not evasion." The objection: framing *MacCormick*, *Gibson* and *Keatings* as a pattern of avoidance misreads ordinary procedure; courts properly dismiss for want of title to sue, prematurity, or non-justiciability, and a court is not a constitutional strike-down mechanism. The audit concedes the point entirely, and that concession is the response. It does not allege that the rules were misapplied or applied in bad faith; it documents that the ordinary procedural filters perform the buffering function set out in the Methodology and the Synthesis. When the highest civil court uses standard threshold rules to decline, consistently, the merits of a collision between the native foundation and the external doctrine, the override is preserved by default each time (the threshold declination exhibit). The audit does not need the rules to be abused; it needs only the documented outcome: that the ordinary procedure is the mechanism by which the override stands. There is no contradiction between "this is routine procedure" and "this is the enforcement mechanic"; the classification holds precisely because both are true at once.

"Devolution by consent: Scotland operates the Scotland Act 1998 framework voluntarily, so there is no override to document." The objection at its strongest: Holyrood is a creature of a devolution settlement established by referendum; the Scottish electorate returns governments to it; the judiciary applies its terms; and [2022] UKSC 31 simply applied the settled boundaries of that framework. This is the lawful administration of a consented settlement, not capture.

The audit documents that the "consented settlement" is itself the statutory mechanism of encasement. Consent to operate a devolved legislature is not the extinction of the native foundation. The Scotland Act 1998 is a Westminster statute, and it reserves the foundational constitutional question to its own author: under Schedule 5, Part I, paragraphs 1(b)–(c), it reserves "the Union of the Kingdoms of Scotland and England" and "the Parliament of the United Kingdom... including the sovereignty of the United Kingdom Parliament." Citing a statute that expressly reserves UK parliamentary sovereignty as proof that the Scottish

community has abandoned its native sovereignty is the contradiction: the 1998 Act encodes the Sovereign-External override into its own text, and the court's non-exercise of the reserved jurisdiction is its treating the boundaries of that creature-statute as the boundaries of the Scottish constitution. The same statutory reservation is the one [2022] UKSC 31 applied, the framework and the apex ruling are the encasement operating, not a neutral settlement.

The political record documents the buffer alongside the machinery. On 4 July 2018 the House of Commons passed, without division, an Opposition Day motion endorsing the Claim of Right for Scotland and acknowledging "the sovereign right of the Scottish people to determine the form of government best suited to their needs." The motion altered nothing: it did not amend the Scotland Act 1998 or touch the Schedule 5 reservation, and on the same evening members put on record that Westminster remained the sovereign Parliament. The motion documents the gap the audit names: Westminster affirming native sovereignty as non-binding rhetoric while the statutory machinery that reserves sovereignty to itself, and the apex that enforces it ([2022] UKSC 31), stands untouched. Affirmed in words, reserved in law.[16]

Constitutional Implications

The Narrative Flip: By What Right?

The classification reverses the question. The constitutional question is not whether Scotland may challenge Westminster's authority. It is the reverse: by what right does a Scottish court enforce a foreign doctrine its own bench has named alien, over a people whose foundational instruments it exists to serve? There is no answer to that question that is not a confession. If the court answers "by Westminster statute," it confesses the Sovereign-External override. If it answers "by the Treaty," it confesses to enforcing terms it concedes are unrewritable as though they were rewritable. The burden moves to the bench, and every exit is an admission.

The Unidirectional Valve

The classification confirms that the Scottish judiciary sits on the seam of a constitutional polarity. On one side is the Scottish civic-constitutional foundation: sovereignty in the community of the realm, the Crown held conditional. On the other is the English political-elitist foundation: absolute, unlimited Crown-in-Parliament. The structural implication is that the Court of Session functions as a unidirectional valve: it occupies the Scottish jurisdiction, but its operational plumbing permits only the flow of the external override. The one-way flow is itself evidence: an amalgamation of equals would carry doctrine in both directions, but the record shows the external doctrine flowing north over the Scots foundation while the native doctrine of conditional sovereignty has never once flowed south to bind Westminster: affirmed in words, reserved in law. (The full account of the two foundations and their incompatibility is the subject of a separate analysis; here the seam is named where the court stands astride it, not argued in full.)

Contemporary Confirmation: The Citizen and the Absolute State

The classification is not a historical artefact; the contemporary record shows the valve in operation. Where the court identifies a breach of fundamental right and enforces the external statutory override regardless, the citizen is left exposed to the absolute power of the state, and

the court records the mechanic in its own voice.

In *Hirst v The Chief Constable, Police Service of Scotland and others* [2026] CSOH 8, the Outer House heard a malicious-prosecution claim arising from the aftermath of the Salmond trial. Lord Lake found that section 170 of the Criminal Procedure (Scotland) Act 1995 barred the claim on its terms (the pursuer had not been imprisoned and the action was out of time) and held that the section could not be read compatibly with Article 6 ECHR under section 3 of the Human Rights Act 1998 without changing the essential scheme of the provision. On 5 February 2026 he made a declaration under section 4 of the 1998 Act that section 170 is incompatible with Article 6, as an unjustifiable restriction on the right to a merits determination, then applied the immunity as binding and dismissed the action, granting no further remedy.[17]

The UK Supreme Court has held unimpeded access to the courts to be a constitutional fundamental inherent in the rule of law (*R (UNISON) v Lord Chancellor* [2017] UKSC 51).[18] Measured against that standard, *Hirst* shows the citizen's access to justice against the state subordinated, at the Scottish seam, to a statutory shield the court itself declared incompatible with the right. The mechanic is in the judge's own words: "The 1995 Act is binding on me and is material to the decision I am required to take." The defect is identified; the override is enforced because the external statute binds. The court named the incompatibility and applied the statute anyway, the override enforced over a named defect, recorded by the bench itself.

The Human Rights Act section 4 mechanism operating here is, in itself, ordinary: a court declares a statute incompatible and applies it regardless, as any United Kingdom court does, in any jurisdiction, with any incompatible Act. What makes *Hirst* SE-CEC-illustrative is narrower: the statute the override preserves is the immunity shielding the Crown's prosecutors, and the right it overrides is the citizen's access to a court against the state itself, so the case is the exact point at which the external supremacy is enforced not in a neutral private dispute but at the seam where the subject confronts the absolute power of the state, with the bench recording, in its own voice, that it is bound to enforce the shield it has just declared incompatible. The ordinary mechanism, applied at that seam, is the SE-CEC operating in the one register where its character is visible: the citizen against the absolute state, the override enforced, the bench naming the bind.

One anchored exhibit is the yield, and the reason is itself on-thesis. The court's characteristic mode, when the native foundation is in play, is the threshold declination and the ordinary-procedure dismissal, the override left standing by default, the mechanic never named (the Synthesis records the pattern). A case in which the bench states the mechanic on the record, as *Hirst* does, is therefore the exception, not the rule: the contradiction is usually performed silently. Other contemporary cases involving the same litigants do not supply a second clean instance: Salmond's 2019 judicial review (*Salmond v Scottish Ministers*, Court of Session, Lord Pentland) was an administrative-law challenge won against the Scottish Government on apparent bias and procedural unfairness, engaging no constitutional foundation; Murray's 2021 contempt proceedings (High Court of Justiciary, jigsaw identification) turned on Article 10 and reporting restrictions, not the polarity. Neither carries the classification, so neither is anchored here.

The Forum

The classification does its final work not as description but as a lens through which a live constitutional cause becomes legible ahead of its outcome. A court in the SE-CEC condition, presented with a pleaded assertion of the native reserved jurisdiction, faces a forum with no neutral exit. The exits are finite, and each one reads back onto the classification rather than away from it.

There are three. The court may *rule on the merits for the override*: hold that the native foundation confers no jurisdiction to entertain the challenge, and that Westminster's competence governs. That is the override stated openly, the Enforcement Court performing its function in plain sight: the rarest outcome, because it is the one that names the mechanic aloud. The court may *decline at the threshold*: find the matter non-justiciable, premature, or the pursuer without title, and dispose of the cause without reaching the collision. That is the characteristic mode the Synthesis records (*MacCormick, Gibson, Keatings*): the override left standing by default. Or the court may *exercise the reserved jurisdiction*: entertain the native foundation on its own terms and adjudicate the collision the bench has reserved, twice, for seventy years.

What the classification adds is that none of the three can be misread once the mechanics are documented. The lateral buffer works by letting a threshold dismissal pass as the mere absence of constitutional action, a procedural footnote. With the court's operation on the record, that reading is no longer available: a threshold declination is legible as the mechanism by which the external override is preserved, not as a neutral non-event. Two of the three exits therefore confirm the SE-CEC directly, the override enforced (the ruling on the merits), or the override preserved by declination (the decline at the threshold). The third does not refute the classification; it *ends the condition,* by doing the thing the classification has said throughout the court was free to do and had not, the condition being defined as the non-exercise of the reserve, exercise of the reserve is the condition ceasing to obtain. It is the condition's terminus, not the court redeemed.

Within the framework this audit documents, the exits are finite. A court need not accept the framework, but on a squarely pleaded assertion of the native right, the dispositions available to it map onto the three. A resolution on ECHR or Human Rights Act grounds, or a grant of partial procedural relief, does not escape the set: each resolves the cause without reaching the collision between the native foundation and the external doctrine, and so falls within *declination at the threshold*, the override left standing by default, the merits of the foundation unreached. Such a disposition does not confirm the override on the merits, but neither does it exercise the reserve; it is the characteristic mode the Synthesis records, in another procedural dress. The documented mechanics leave no disposition which is at once *not* an enforcement of the external doctrine, *not* a declination that leaves it standing, and *not* an exercise of the reserve. Whatever interlocutor issues, the audit can read it: the classification confirmed (on the merits or by declination) or the condition ended by the reserve exercised. There is no fourth thing the record, read through the documented mechanics, can show.

This is the constitutional polarity made operational. The court stands on the seam between two foundations (the civic-constitutional, in which it is rooted, and the political-elitist, which it administers) and a live assertion of the native right forces the seam into the open: in the one cause, the bench must either honour the foundation it is built on or perform the doctrine

whose architecture encases it. Which foundation has the better right is the work of the wider thesis, of which this paper is one instrument. This audit establishes that the court cannot occupy both at once when the two are squarely pleaded against each other, and that the moment of choosing is legible as exactly that: a choice, located in the court, between a jurisdiction it holds and an override it carries. The lens holds for whatever cause squarely pleads the right, whenever one is brought.

Conclusion: The Architecture Named

The mechanical audit yields a precise structural classification of the Scottish judiciary. The Court of Session does not operate as an independent constitutional arbiter within a unified British legal system. It sits at the seam of a constitutional polarity: between the Scottish civic-constitutional foundation, which locates sovereignty in the community of the realm and holds the Crown conditional, and the English political-elitist foundation, which locates absolute and unlimited sovereignty in the Crown-in-Parliament. It functions as a Sovereign-External Colonial Enforcement Court. The classification does not describe a fixed entity-type; it describes a condition the court actively performs.

The condition was not asserted; it was built, from three layers, each grounded in the record and two of the three in the institution's own words.

Layer One established what the court *is*: the holder of a sovereign Scots jurisdiction, founded in 1532, civilian in formation, anchored by extant and unrepealed instruments (Arbroath, enforced in the Claim of Right of 1689) that locate sovereignty in the community of the realm and hold the Crown conditional. It carries a standing reservation of pre-existing right against prejudicial acts, renewed to the end of the independent Parliament, and its distinct authority was encased by the 1707 incorporation.

Layer Two established what the court has *said*: that the doctrine of unlimited parliamentary sovereignty is, in the words of its own Lord President, a distinctively English principle with no counterpart in Scots constitutional law (*MacCormick*, at 411); that the senior bench reserved (twice, across seventy years) the question of whether that doctrine reaches the Scottish foundations (Cooper at 411–412; Keith in *Gibson* at 144); and that the Crown's own senior law officer conceded the fundamental conditions cannot be changed. The court has never ruled itself subordinate on Scots constitutional substance. It declined to.

Layer Three established what the court *does*: it administers the alien doctrine regardless, through the appointment gateway, the oath sworn to the Crown and not to the foundation, and the appellate route to an external apex, and confirms the operation in its characteristic mode, the threshold declination that leaves the override standing by default, closed at the apex it feeds. The court operates as a unidirectional valve, applying the absolute override to the Scottish subject.

The single implication follows from the structure and from nothing added to it. The reserved right is the community's, not the court's; the court is the instrument tasked to give it effect. Because the foundational instruments remain unrepealed, and because the senior bench has reserved (not closed) the question of the external doctrine's reach, the people's right sits intact and unvindicated, and the instrument that should give it effect declines to reach it. The court's

compliance is not compelled, its own record contains no ruling that compels it, and two reservations declining to supply one. What this establishes is narrow and exact: the court enforces a doctrine its own bench recorded as alien *in origin and character* to Scots constitutional law, and it does so in the absence of any ruling that the doctrine's *authority* lawfully reaches the foundations, a question the bench twice declined to answer. The court enforces as though the second were settled while its own record leaves it open. The condition is therefore not a fate the court suffers but an operation it performs as the people's instrument, and what is performed can cease to be performed the moment the people put their right before the court and it reaches the merits.

One verdict the documented mechanics have earned, and the audit names it now. When an institution holds, within its remit of office, the codified law instruments of a native sovereignty that belongs to the people and it then formally records the external doctrine of another nation's law on its own bench, yet continuously subjects those same people to that doctrine through the non-exercise of the jurisdiction reserved to give their right effect, the mechanics deliver a single synthesised verdict: 'institutional dereliction'. The right is the people's, held by the court only as their instrument; the condition is one only the people can require ended and only the court can end, not by exercising a sovereign power it holds, which it does not, but by reaching, on a cause that squarely pleads the right, the merits its bench has reserved. The verdict names a condition, not a sentence: what the mechanics have performed for three centuries, the same court could cease to perform in a single judgment, the moment a cause squarely pleads the reserved right and the court reaches the merits it has so far declined to reach.

This audit prescribes no remedy, issues no call to action, and predicts no outcome. The act is the naming. By documenting the gap between the jurisdiction the court holds and the operation the court performs, the classification places the operating mechanics of the Scottish judiciary permanently on the public record, and a contradiction, once documented in the institution's own record, needs no advocate to defend it.

Notes and References

1. The compound is anchored at source. *Herrenvolk democracy* is van den Berghe's analytical category for a polity democratic within the dominant group and tyrannical in its operation toward those outside it (Pierre L. van den Berghe, *Race and Racism: A Comparative Perspective*, Wiley, 1967, p. 18); the -Franchise qualifier transposes the axis of exclusion from race to franchise, displacing the racial reading by design. *Elective Dictatorship* is Lord Hailsham's term for a Parliament whose only limits are political and moral, not legal (Richard Dimbleby Lecture, delivered 9 October 1976, broadcast BBC One 14 October 1976; *The Listener*, 21 October 1976). The full classification is developed in the author's published companion analysis: Eòin J Màrtainn, *HFED Constitutional Taxonomy* (SCRDI, 27 April 2026), archive.org/details/hfed-constitutional-taxonomy-27-april.
2. Founding statute and date verified.
3. The 1592 and 1663 acts verified at source, including the self-describing "in all preceding parliaments" wording.
4. 1706/10/465 verified at source from the manuscript record (NAS PA6/34, 'March 25 1707'; PA6/36, f.89/266); enactment, judicial direction and the named burgh-impositions exception read directly.
5. Dictum and case disposition verified.
6. Verified at source: 1953 SC 396, Cooper LP, full opinion read (Wikisource transcription; Bailii [1953] ScotCS CSIH_2, the neutral citation confirmed against Bailii's OpenLaw index); reservation in the continuous

passage from 411 ("I reserve my opinion with regard to the provisions relating expressly to this Court and to the laws 'which concern private right' which are administered here"); pinpoint 411–412 per judicial citation.

7. Verified at source: 1953 SC 396, Cooper LP recording the concession ("The Lord Advocate conceded this point by admitting that the Parliament of Great Britain 'could not' repeal or alter such 'fundamental and essential' conditions"); full opinion read (Wikisource transcription; Bailii [1953] ScotCS CSIH_2, the neutral citation confirmed against Bailii's OpenLaw index). Secondary: the SC 396 report pinpoint at 411, with Erskine May §4535 concurring.

8. Holding and reservation verified at source, Bailii. Note: "Scots private law," not "Scots law", the reservation tracks Article XVIII's private-right entrenchment.

9. Verified at source: Court of Session Act 1988 s.40 (CRA 2005 s.40(3) repealed 22.9.2015); Scotland Act 1998 Sch.6 Pt I; CPSA 1995 ss.288AA, 288ZA (Scotland Act 2012); *Cadder* [2010] UKSC 43.

10. Verified at source: Promissory Oaths Act 1868 ss.2, 4, 6 and the Schedule, Second Part ("Scotland").

11. The Claim of Right's oath clause read at source (legislation.gov.uk/aosp/1689/28; the instrument at NRS PA2/33, RPS 1689/3/108).

12. Verified at source: Judiciary and Courts (Scotland) Act 2008 ss.1(1), 9, 11, 19, 21.

13. Dunlop's own public statements, X thread of 7–8 December 2023, quoted verbatim for criticism of a public figure's public statements. Anchors: the centrepiece post (@RoddyQC, 5:26 AM, 8 December 2023) at x.com/RoddyQC/status/1732994934649635165, archived at archive.ph/SeTuh (captured 11 June 2026); the ballot-box and Westminster-sovereignty posts of 7 December 2023 reported contemporaneously, with three spans carried verbatim, in the Scottish Daily Express, 8 December 2023 (scottishdailyexpress.co.uk/news/politics/top-lawyer-brands-kirsty-blackman-31626895); full-thread screenshot held in the project record. Developed at length as the standalone Sovereignty Series piece "The Dean's Confession".

14. Verified at source: [2022] UKSC 31, holding and Sch.5 paras 1(b)–(c) read directly; UKSC permalink uksc-2022-0098.

15. Desuetude's pre-Union restriction verified at source: Dictionaries of the Scots Language, SND s.v. "desuetude," quoting Green's Encyclopaedia (1933) XIV.232; dsl.ac.uk/entry/snd/desuetude. The high-bar formulation is the doctrine's general requirement (no open-access case citation; the SLT authority is paywalled and is therefore not named). Source: Dictionaries of the Scots Language (Scottish National Dictionary), s.v. "desuetude," quoting Green's Encyclopaedia of the Law of Scotland (1933) XIV.232; first published SND Vol. III (1952). Permalink (fetched and verified at source): dsl.ac.uk/entry/snd/desuetude Verbatim: "The law of Scotland has allowed Acts of Parliament and Acts of Sederunt to lose their force by disuse, without express repeal... As regards statutes, the principle applies only to Acts of Parliament passed prior to the Union." Audit note: The source verifies the load-bearing restriction: desuetude reaches *only Acts of Parliament passed prior to the Union*. The secondary requirement (a high bar: settled contrary community usage amounting to a counter-law, not mere neglect) is stated in the text as the doctrine's general requirement, not attributed to a named authority: the defining case (*Brown v Magistrates of Edinburgh* [1931] SLT 456) is held behind a commercial paywall with no open-access primary link and is therefore excised under the "no link, no anchor" protocol. The rebuttal rests solely on the open-access doctrinal source above. The audit does not assert that desuetude can never reach a constitutional instrument (that reach is not squarely settled) and confines itself to what the source establishes.

16. Scotland Act 1998 Sch.5 Pt I paras 1(b)–(c) (legislation.gov.uk/ukpga/1998/46/schedule/5; the reservation [2022] UKSC 31 turned on); 2018 motion verbatim, mover, date and non-binding status verified at source: Hansard HC Deb 4 July 2018, Vol. 644. Source: Scotland Act 1998, Schedule 5, Part I (General Reservations), paragraphs 1(b)–(c). Terms: the reserved aspects of the constitution include "the Union of the Kingdoms of Scotland and England" (1(b)) and "the Parliament of the United Kingdom" (1(c)), the latter expressly including "the sovereignty of the United Kingdom Parliament." Permalink: legislation.gov.uk/ukpga/1998/46/schedule/5 Cross-reference: this is the same reservation applied in *Reference by the Lord Advocate* [2022] UKSC 31 (verified in the Synthesis), which read paras 1(b)–(c) as placing the referendum question within reserved matters. Source: Hansard, House of Commons Debates, 4 July 2018, Vol. 644 (Claim of Right for Scotland). Mover: Ian Blackford MP, leader of the SNP Westminster group (Opposition Day). Verbatim: "That this House endorses the principles of the Claim of Right for Scotland, agreed by the Scottish Constitutional Convention in 1989 and by the Scottish Parliament in 2012, and therefore acknowledges the sovereign right of the Scottish people to determine the form of government

best suited to their needs." Status / audit note (verified at source): the amendment was not selected; the motion passed without a division and as a non-binding resolution. It did *not* amend the Scotland Act 1998 or alter the Sch. 5 reservation, and members affirmed in the same sitting that Westminster remained the sovereign Parliament. The motion is therefore deployed only as documentation of the gap between the affirmation in words and the reservation in law, not as a legal instrument and not as proof that sovereignty was transferred. Permalink: hansard.parliament.uk/commons/2018-07-04/debates/18070455000001/ClaimOfRightForScotland

17. Case: *Mark Hirst v The Chief Constable, Police Service of Scotland and others* [2026] CSOH 8 (Outer House, Lord Lake). Holding (verified at source): s.170 of the Criminal Procedure (Scotland) Act 1995 barred the malicious-prosecution claim on its terms (pursuer not imprisoned; action out of time) and could not be read compatibly with Article 6 ECHR under HRA 1998 s.3 without altering its essential scheme; declaration of incompatibility made under HRA 1998 s.4 (5 February 2026); immunity applied as binding, action dismissed, no further remedy. Judge's words: "The 1995 Act is binding on me and is material to the decision I am required to take." Permalink: scotcourts.gov.uk/media/ppmhltjh/2026csoh8-mark-hirst-against-the-chief-constable-police-service-of-scotland-and-others.pdf (official SCTS judgment, verified at source). Verified at source, 11 June 2026: the full Opinion read at the SCTS record (scotcourts.gov.uk/media/ppmhltjh/2026csoh8-mark-hirst-against-the-chief-constable-police-service-of-scotland-and-others.pdf); the quoted sentence confirmed verbatim at paragraph [46], and the disposal at [47] confirmed: action dismissed; declaration under HRA 1998 s.4 that s.170 of the 1995 Act is inconsistent with Article 6 as "an unjustifiable restriction on a pursuer's right to have a determination of the merits of his claim."

18. Case: *R (UNISON) v Lord Chancellor* [2017] UKSC 51: unimpeded access to the courts held inherent in the rule of law; used here as a measuring standard, not a rebuttal. Permalink: bailii.org/uk/cases/UKSC/2017/51.html

Bibliography

Sources verified at source for this audit:

Primary instruments

- Declaration of Arbroath, 6 April 1320 (NRS SP13/7).
- College of Justice Act 1532 (Parliament of James V); papal bull of Clement VII, 1531.
- Claim of Right of 1689 (NRS PA2/33, p. 38; RPS 1689/3/108).
- Act *salvo jure cujuslibet* 1663 (RPS 1663/6/146); RPS 1592/4/60; and the closing *Act salvo jure cujuslibet* of the final session, 25 March 1707 (RPS 1706/10/465; manuscript NAS PA6/34, PA6/36 f.89/266), with its express direction to the lords of session and named burgh-impositions exception; preceded by the *Act concerning the publick debts* (RPS 1706/10/464).
- Articles of Union, ratified by the Parliament of Scotland, Act of 16 January 1707: Articles XVIII, XIX.

Cases

- *MacCormick v Lord Advocate* 1953 SC 396 (dictum at 411; reservation at 411–412; Lord Advocate's concession at 411; full opinion read at source via the Wikisource transcription; Bailii [1953] ScotCS CSIH_2, the neutral citation confirmed against Bailii's OpenLaw index).
- *Gibson v Lord Advocate* 1975 SC 136 (Lord Keith at 143–144; Bailii [1975] ScotCS CSOH_3).
- *R (UNISON) v Lord Chancellor* [2017] UKSC 51 (access to justice as a constitutional fundamental; bailii.org/uk/cases/UKSC/2017/51.html).

- *Mark Hirst v The Chief Constable, Police Service of Scotland and others* [2026] CSOH 8 (Outer House, Lord Lake, 5 February 2026; HRA 1998 s.4 declaration of incompatibility, CPSA 1995 s.170 / Article 6; immunity applied as binding; scotcourts.gov.uk).
- *Keatings v Advocate General for Scotland* [2021] CSIH 25; 2021 SC 329 (Inner House; the action dismissed as hypothetical and premature).
- *Reference by the Lord Advocate of devolution issues under paragraph 34 of Schedule 6 to the Scotland Act 1998* [2022] UKSC 31, 23 November 2022 (the proposed referendum Bill relates to reserved matters, the Union, and the Parliament of the UK "including the sovereignty of the United Kingdom Parliament," Sch. 5 paras 1(b)–(c)). UKSC ref uksc-2022-0098.

Statutes (operation)

- Court of Session Act 1988, s. 40 (as substituted by Courts Reform (Scotland) Act 2014, s. 117); Constitutional Reform Act 2005, s. 40(3) (repealed 22.9.2015).
- Promissory Oaths Act 1868, ss. 2, 4, 6 and Schedule, Second Part ("Scotland").
- Judiciary and Courts (Scotland) Act 2008, ss. 1(1), 9, 11, 19, 21.
- Scotland Act 1998, Sch. 6, Pt I; Criminal Procedure (Scotland) Act 1995, ss. 288AA, 288ZA (inserted by Scotland Act 2012); *Cadder v HM Advocate* [2010] UKSC 43.
- Scotland Act 1998, Sch. 5, Pt I, paras 1(b)–(c) (reserving the Union and the sovereignty of the UK Parliament); legislation.gov.uk/ukpga/1998/46/schedule/5.

Parliamentary record

- Hansard, HC Deb 4 July 2018, Vol. 644, "Claim of Right for Scotland" (motion moved by Ian Blackford MP; passed without division as a non-binding resolution); hansard.parliament.uk/commons/2018-07-04/debates/18070455000001/ClaimOfRightForScotland.

Secondary / institutional

- James Dalrymple, Viscount Stair, *The Institutions of the Law of Scotland* (1681).
- John Erskine, *An Institute of the Law of Scotland* (1773).
- A.V. Dicey, *Introduction to the Study of the Law of the Constitution* (1885).
- H.W.R. Wade, "The Basis of Legal Sovereignty" [1955] CLJ 172 (Cambridge Law Journal, Vol. 13, No. 2, Nov. 1955, pp. 172–197; the canonical modern restatement of the orthodox position, written in response to *MacCormick*).
- T.B. Smith, "The Union of 1707 as Fundamental Law" [1957] PL 99 (reprinted in *Studies Critical and Comparative*). Cited as the nearest press of the first current toward operational consequence, an argument of law, not an audit of operation.
- Charles H. Alexandrowicz, "New and Original States: The Issue of Reversion to Sovereignty," *International Affairs* (RIIA), Vol. 45, No. 3 (July 1969), pp. 465–480 (OUP for Chatham House; JSTOR stable URL 2614823). Cited as the classic statement of the reversion-to-sovereignty strand of the continuator-state current: described, not adopted; the audit takes no position on reversion.

- James Crawford and Alan Boyle, "Annex A — Opinion: Referendum on the Independence of Scotland – International Law Aspects," in *Scotland Analysis: Devolution and the Implications of Scottish Independence* (UK Government, February 2013), preferred view at paras 35 and 67. Cited as the counter-position within the third current: Crown-commissioned; described, not contested; the audit takes no position on the status dispute.

On the H-FED classification. The *Herrenvolk-Franchise Elective Dictatorship* (H-FED) is the classification of the English constitutional foundation developed in the companion paper and is used in this paper only as the name of the polarity's English pole; it is not re-argued here.

- Eòin J Màrtainn, *HFED Constitutional Taxonomy* (SCRDI, Scotland's Commons Research and Development Initiative, 27 April 2026; Internet Archive, archive.org/details/hfed-constitutional-taxonomy-27-april; ark:/13960/s2bs0wp0jqq; CC BY 4.0), the companion analysis grounding the H-FED classification of the English state, applying the same Mechanic Audit methodology.
- Pierre L. van den Berghe, *Race and Racism: A Comparative Perspective* (John Wiley & Sons, 1967), p. 18: origin of the analytical term "Herrenvolk democracy," defined as a polity "democratic for the master race but tyrannical for subordinate groups": equality within the dominant group, premised on the exclusion that sustains the order.

Herrenvolk is German for "master race." The compound's -Franchise qualifier marks a deliberate transposition of van den Berghe's category: it keeps the structural form (full standing within the dominant group, those outside it dominated) but moves the axis of exclusion from *race* to *franchise*. In the H-FED classification the dominant group is the enfranchised electorate, sovereignty is vested in the elected Parliament without conditional limit, and the foundation excluded is the conditional, community-located sovereignty the Scots tradition asserts. *Elective Dictatorship* completes the term in the sense given by Lord Hailsham (Quintin Hogg), former Lord Chancellor, who coined the phrase in his Richard Dimbleby Lecture "The Elective Dictatorship" (delivered 9 October 1976, per the Churchill Archives Centre record of Hailsham's papers; broadcast BBC One, 14 October 1976; published in *The Listener*, 21 October 1976, pp. 496–500): a Parliament under which the only limits on sovereignty are "political and moral", the elected body holding unlimited legal power between elections, checked by nothing in law. The qualifier is therefore load-bearing, not decorative: the classification turns on the franchise mechanism, not on race; the racial reading of the bare word is precisely what the compound is built to displace. And the "Elective Dictatorship" element is the system named from within, by one of its own former Lord Chancellors.

- Quintin Hogg, Lord Hailsham of St Marylebone, "The Elective Dictatorship," the 5th Richard Dimbleby Lecture (delivered 9 October 1976, per the Churchill Archives Centre record of Hailsham's papers; broadcast BBC One, 14 October 1976; published in *The Listener*, 21 October 1976, pp. 496–500): origin of the term "elective dictatorship": the doctrine that the only limits on parliamentary sovereignty are political and moral, not legal.

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